

902 KAR 100:165. Notices, reports, and instructions to employees.

RELATES TO: KRS 211.842 - 211.852, 211.990(4), 10 C.F.R. 19.11 to 19.17, 30.7, 30.10

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

Section 1. Posting of Notices to Workers. (1) A licensee or registrant shall post current copies of the following documents:

(a) This administrative regulation and 902 KAR 100:019, relating to standards for protection against radiation;

(b) The license, certificate of registration, conditions or documents incorporated into the license by reference, and amendments to the license;

(c) The operating procedures for work under the license or registration; and

(d) A notice of violation involving radiological working conditions, proposed imposition of civil penalty, or order issued as authorized by 902 KAR 100:170, and responses from the licensee or registrant.

(2) If posting of a document specified in subsection (1)(a), (b), or (c) of this section is not practical, the licensee or registrant shall post a notice that describes the document and states where it may be examined.

(3) Cabinet form KR-441, Notice to Employees, shall be prominently posted by a licensee or registrant.

(4) Documents, notices, or forms posted as required by this section shall:

(a) Appear in a sufficient number of places to permit an individual engaged in work under the license or registration to observe them on the way to or from a particular work location to which the document applies;

(b) Be conspicuous; and

(c) Be replaced if defaced or altered.

(5)(a) Cabinet documents posted as required by subsection (1)(d) of this section shall be posted within two (2) working days after receipt of the documents from the cabinet;

(b) The licensee's or registrant's response shall be posted within two (2) working days after dispatch from the licensee or registrant; and

(c) The documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

Section 2. Instructions to Workers. (1) An individual likely to receive in a year, during the course of employment, an occupational dose in excess of 100 millirems (one (1) mSV) shall be:

(a) Kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) Informed of health protection problems, to the individual and potential offspring, associated with exposure to radioactive material or radiation, and instructed in precautions or procedures to minimize exposure and in the purposes and functions of protective devices employed;

(c) Instructed in, and instructed to observe, to the extent within the worker's control, the applicable requirements of 902 KAR Chapter 100 and licenses issued thereunder for the protec-

tion of personnel from exposures to radiation or radioactive material;

(d) Instructed of their responsibility to report promptly to the licensee or registrant a condition that may lead to or cause a violation of the Act, 902 KAR Chapter 100 or license conditions, or unnecessary exposure to radiation or radioactive material;

(e) Instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) Informed of the radiation exposure reports that workers may request as authorized by Section 3 of this administrative regulation.

(2) In determining the individuals subject to the requirements of this section, a licensee or registrant shall take into consideration assigned activities during normal and abnormal situations involving exposure to radioactive material or radiation that can reasonably be expected to occur during the life of a licensed or registered facility. The extent of the instructions shall be commensurate with potential radiological health protection problems in the workplace.

Section 3. Notifications and Reports to Individuals. (1) Radiation exposure data for an individual and the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual, shall be reported to the individual.

(2) The information reported shall include data and results obtained as required by 902 KAR Chapter 100, orders, or license conditions as shown in records maintained by the licensee or registrant as required by 902 KAR 100:019, Section 34.

(3) Each notification and report shall:

(a) Be in writing;

(b) Include the following identifying data:

1. The name of the licensee or registrant;

2. The name of the individual; and

3. The individual's identification or Social Security number.

(c) Include the individual's exposure information; and

(d) Contain the following statement: "This report is furnished to you under the provisions of the Kentucky Cabinet for Health and Family Services' radiation administrative regulations, 902 KAR 100:165. Preserve this report for further reference."

(4) A licensee or registrant shall advise the worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee or registrant required by 902 KAR 100:019, Section 34.

(5) At the request of a worker formerly engaged in work controlled by the licensee or the registrant, a licensee or registrant shall furnish to the worker a report of the worker's exposure to radiation or radioactive material. The report shall:

(a) Be furnished within thirty (30) days from the time request is made, or within thirty (30) days after the exposure of the individual has been determined by the licensee or registrant, whichever is later;

(b) Cover the period of time the worker's activities involved exposure to radiation from radioactive materials licensed by, or radiation machines registered with, the cabinet; and

(c) Include the dates and locations of work under the license or registration in which the worker participated during this period.

(6) If a licensee or registrant is required, pursuant to 902 KAR 100:019, Sections 40, 41, and 42, to report to the cabinet an exposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the exposure data included in the report to the cabinet. The reports shall be transmitted to the individual at a time not later than the transmittal to the cabinet.

(7)(a) At the request of a worker who is terminating employment in work involving exposure

to radiation or radioactive material during the current year, the licensee or registrant shall provide to the worker, or to the worker's designee, at termination a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof.

(b) If the most recent individual personnel monitoring results are not available at the time of termination, a written estimate of the dose shall be provided.

(c) Estimated doses shall be clearly indicated as estimated doses.

Section 4. Presence of Representatives of Licensees or Registrants and Workers during Inspection. (1) A licensee or registrant shall afford to the cabinet at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises, and records required by 902 KAR Chapter 100.

(2) During an inspection, cabinet inspectors may consult privately with workers as specified in Section 5 of this administrative regulation. The licensee or registrant may accompany cabinet inspectors during other phases of an inspection.

(3) If, during the inspection, an individual has been authorized by the workers to represent them during cabinet inspections, the licensee or registrant shall notify the inspectors of the authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in Section 2 of this administrative regulation.

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of an inspection. However, only one (1) workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany cabinet inspectors during the inspection of physical working conditions.

(7) A cabinet inspector shall refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection.

(8) Unless specifically authorized, an individual accompanying an inspector shall not have access to an area containing information classified by an agency of the U.S. government as a national security interest.

(9) Unless previously authorized by the licensee or registrant, a worker's representative shall not have access to an area containing proprietary information.

Section 5. Consultation with Workers during Inspection. (1) If necessary to conduct an effective and thorough inspection, a cabinet inspector may consult privately with a worker concerning a matter of occupational radiation protection or other matter related to 902 KAR Chapter 100, licenses, or registrations.

(2) During the course of an inspection, a worker may bring to the attention of the inspectors, either orally or in writing, a past or present condition that he has reason to believe may have contributed to or caused a violation of the Act, 902 KAR Chapter 100, or license condition, or an unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. A written notice shall comply with the requirements of Section 6(1) of this administrative regulation.

(3) The requirements of subsection (2) of this section shall not be interpreted as authorization to disregard instructions required by Section 2 of this administrative regulation.

Section 6. Requests by Workers for Inspections. (1)(a) A worker or representative of workers who believes that a violation of the Act, 902 KAR Chapter 100, or a license condition exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Cabinet for Health and Family Services, Radiation Health Branch.

(b) The notice shall:

1. Be in writing;
2. Set forth the specific grounds for the notice; and
3. Be signed by the worker or representative of the workers.

(c) A copy shall be provided to the licensee or registrant by the cabinet no later than at the time of inspection. If the worker giving the notice requests, his name and the name of individuals referred to in the notice shall not appear in the copy or on a record published, released, or made available by the cabinet, except for good cause shown.

(2) In accordance with 49 C.F.R. 19.16, if, upon receipt of the notice, the Manager, Radiation Health Branch, determines that the complaint meets the requirements established in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the manager of the Radiation and Health Branch shall cause an inspection to be made as soon as practicable, to determine if the alleged violation exists or has occurred. An inspection authorized by this section may not be limited to matters referred to in the complaint.

(3) A licensee, registrant, contractor, or subcontractor of a licensee or registrant, shall not discharge or discriminate against a worker because the worker has:

- (a) Filed a complaint;
- (b) Instituted or caused to be instituted a proceeding under 902 KAR 100:170;
- (c) Testified or is about to testify in a proceeding; or
- (d) Exercised an option on behalf of himself or others afforded by this administrative regulation.

Section 7. Inspections not Warranted; Informal Review. (1)(a) If the Cabinet for Health and Family Services, Radiation Health Branch determines, with respect to a complaint under Section 6 of this administrative regulation, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the cabinet shall notify the complainant in writing of the determination.

(b) The complainant may obtain a review of the determination by submitting a written statement of position with the Commissioner, Department for Public Health. The commissioner shall provide the licensee or registrant with a copy of the statement by certified mail excluding, at the request of the complainant, the name of the complainant.

(c) The licensee or registrant may submit an opposing written statement of position with the commissioner, who shall provide the complainant with a copy of the statement by certified mail.

(2) Upon the request of the complainant, the commissioner shall hold an administrative hearing in accordance with 902 KAR 1:400.

(3) If the Radiation Health Branch determines that an inspection is not warranted because the requirements of Section 6(1) of this administrative regulation have not been met, the complainant shall be notified, in writing, of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 6(1) of this ad-

ministrative regulation.

Section 8. Employee Protection. (1) Discrimination by a cabinet licensee, an applicant for a cabinet license, a registrant or a contractor or subcontractor of a cabinet licensee, registrant or applicant against an employee for engaging in protected activities shall be prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

(a) The protected activities include in part:

1. Providing the cabinet or his or her employer information about alleged violations or possible violations of requirements of 902 KAR Chapter 100;

2. Refusing to engage in a practice made unlawful under these requirements, if the employee has identified the alleged illegality to the employer;

3. Requesting the cabinet to institute action against his or her employer for enforcement of these requirements;

4. Testifying in a cabinet proceeding, before Congress, or at a federal or state proceeding regarding a provision, or proposed provision, of 902 KAR Chapter 100; and

5. Assisting or participating in, or is about to assist or participate in, a protected activity.

(b) A protected activity shall retain its protected status even if no formal proceeding is initiated as a result of the employee assistance or participation.

(c) This section shall not be applied to an employee alleging discrimination who, acting without direction from his or her employer or the employer's agent, deliberately causes a violation of the Act or the administrative regulations promulgated under the Act.

(2) An employee who believes that he or she has been discharged or discriminated against for engaging in a protected activity may seek a remedy through an administrative proceeding in the Department of Labor.

(a) The aggrieved employee shall file a complaint within 180 days after the occurrence of the alleged violation with the Kentucky Department of Labor, Employment Standards Administration, Wage and Hour Division.

(b) If warranted by the evidence presented, the Kentucky Department of Labor may order reinstatement, back pay, and compensatory damages as appropriate to the case.

(3) A violation of subsections (1) or (5) of this section or Section 1(3) of this administrative regulation by a cabinet licensee, an applicant for a cabinet license, or a contractor or subcontractor of a cabinet licensee or applicant shall constitute grounds for:

(a) Denial, revocation, or suspension of the license;

(b) Imposition of a penalty; or

(c) Other enforcement action.

(4)(a) An action taken by an employer or others that adversely affects an employee shall be predicated upon nondiscriminatory grounds.

(b) The prohibition applies if the adverse action occurs because the employee has engaged in a protected activity.

(c) An employee's engagement in a protected activity does not automatically render him or her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

(5) An agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor, shall not contain a provision that has the potential to prohibit, restrict, or discourage an employee from participating in protected activity, including providing information to the cabinet or to his or her employer on alleged violations or other matters within cabinet's regulatory responsibilities.

Section 9. Deliberate Misconduct. (1) This section applies to:

- (a) Licensee;
- (b) Registrant;
- (c) Certificate of registration holder;
- (d) Applicant for a license, or certificate of registration;
- (e) Employee of any person identified in this section; or
- (f) Contractor, including a supplier, consultant, or subcontractor to any person identified in this section.

(2) Any person identified in subsection 1 of this section shall not:

(a) Engage in deliberate misconduct that causes or may have caused, if not detected, a licensee, registrant, certificate of registration holder, or applicant to be in violation of a rule, administrative regulation, order; term, condition, or limitation of a license issued by the cabinet; or

(b) Deliberately submit to the cabinet, a licensee, registrant, certificate of registration holder, an applicant, or a licensee's, certificate holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the cabinet.

(3) A person who violates subsection (2) of this section shall be subject to enforcement action in accordance with the procedures in 902 KAR 100:170.

(4) For the purposes of subsection (2)(a) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) May cause a licensee, registrant, certificate holder, or applicant for a license, registration, or certificate to be in violation of the rule, regulation, order or a term, condition, or limitation of a license, registration, or certificate issued by the cabinet; or

(b) Constitutes a violation or a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, certificate holder, applicant, or the contractor or subcontractor of any of them.

Section 10. Incorporation by Reference. (1) Form KR-441, "Notice to Employees", edition 2/2011 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m. (1 Ky.R. 420; eff. 2-5-75; Am. 3 Ky.R. 170; eff. 9-1-76; 12 Ky.R. 1073; eff. 1-3-86; 18 Ky.R. 1578; eff. 1-10-92; 24 Ky.R. 771; eff. 11-14-97; 26 Ky.R. 2418; 27 Ky.R. 991; eff. 10-16-2000; 37 Ky.R. 1863; 2651; eff. 6-3-11.)